

Tree Roots Damaging Neighbor's Property

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Issue

Under Connecticut law, who is responsible if the roots from a tree damage neighboring private property, such as damaging the driveway?

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

Liability for Damage Caused by Tree Roots

Connecticut statutes do not address liability for damage caused by tree roots from one private property growing into a neighboring private property. The owner of the property sustaining the damage could sue his or her neighbor in such a situation, likely under the legal theories of negligence or nuisance. We did not find any state Appellate or Supreme Court cases directly addressing whether the tree owner could be held liable.

Because the statutes do not address this situation, a court in such a case would have to determine what common law rules to apply— for example, whether to apply the Restatement (Second) of Torts (§ 363). The Restatement generally provides that a landowner is not liable “for physical harm caused to others outside of the land by a natural condition of the land,” including the natural growth of trees. The Restatement provides an exception in some circumstances for trees near public highways. The Comment to § 363 also specifies that a tree that the owner plants (as opposed to one already growing upon the land) is not considered to be a “natural condition of the land.”

In an unpublished Superior Court case from 1999, landowners sought an injunction against their neighbor, claiming that roots from the neighbor's tree caused a nuisance and damaged their septic system. The defendant, citing to the Restatement, argued that she could not be held liable for the natural growth of tree roots. The court did not address the Restatement, but it denied the injunction, concluding that there was insufficient evidence to show the roots were the proximate cause of the damage (*Laden v. Downes*, 1999 WL 417298 (Super. Ct. June 14, 1999)). This case is not binding on other courts.

While not involving damage from tree roots, two recent unpublished Superior Court cases discussed the Restatement and concluded that a private landowner was not liable for damage to a private neighbor's property from a falling tree. These cases are also not binding on other courts. (For more information on these cases and related issues, see [OLR Report 2017-R-0221](#) and [OLR Report 2018-R-0157](#).)

Another issue that could arise in cases involving tree roots is whether the landowner or municipality is responsible for the tree. With limited exceptions, the law gives municipal tree wardens authority over trees on private property if the trees' roots or branches extend onto or over any public roads or grounds ([CGS § 23-59](#)). The state Supreme Court has held that this law gives tree wardens exclusive control of such trees (*Muratori v. Stiles and Reynolds Brick Co.* (128 Conn. 674 (1942))).

Although beyond the scope of this report, most court cases involving damage from tree roots involve trip-and-fall injuries when roots damage public sidewalks, as opposed to damaging neighboring private property. In these cases, the injured party generally attempts to hold the municipality liable under the "defective highway" statute ([CGS § 13a-149](#)). (For an example of such a case and a discussion of the elements needed to find a municipality liable, see this [Appellate Court case](#) from 2009.) In limited circumstances, the owner of land abutting the sidewalk could also be liable for injuries caused by the sidewalk's unsafe condition (such as when the landowner's positive act caused the defect in the sidewalk).

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